

ORDER NO. 1487

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Bilateral Agreement Between United States
Postal Service and Posten Norge AS (MC2010-34)
Negotiated Service Agreement

Docket No. CP2012-60

ORDER APPROVING ADDITION OF MODIFIED INBOUND COMPETITIVE
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT (NORWAY POST)

(Issued September 28, 2012)

I. INTRODUCTION

The Postal Service seeks to include a modification of an existing Norway Post Agreement (Modified Agreement) within the existing Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Operators 1) product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of the United States Postal Service of Filing Additional Functionally Equivalent Agreement, September 13, 2012 (Notice). The Notice includes attachments providing supporting documentation and an application for non-public treatment of material filed under seal. There was no opposition to the application.

II. BACKGROUND

The Commission approved the inclusion of an existing Norway Post Agreement within Foreign Operators 1 in 2011, following consideration in Docket No. CP2011-69.² The Modified Agreement extends the existing agreement by 18 months (from October 1, 2012 through March 31, 2014). Notice at 1. The type of postal service offered in both the existing agreement and the Modified Agreement is inbound air parcel post. *Id.* at 3.

III. POSTAL SERVICE FILING

Functional equivalency. The Postal Service asserts that the Modified Agreement fits within the Mail Classification Schedule language included in Governors' Decision No. 10-3 because it offers one of the combinations of inbound competitive services described therein. *Id.* at 2-3. The Postal Service also states that the Modified Agreement demonstrates cost and market characteristics similar to the baseline agreement (designated in Docket No. CP2010-95). *Id.* at 3. It states that the service offered — Inbound Air Parcel Post — fits within Foreign Postal Operators 1, and therefore both the Modified Agreement and the baseline agreement conform to a common description. *Id.* The Postal Service further states that for both agreements, the general terms and conditions of exchange, which it considers cost drivers, are spelled out through the E-Parcels Group agreement and its sub-agreements, as are the financial models. *Id.* It states that there are a few minor adjustments to the models, such as the expression of costs in different currencies, but asserts that these are inconsequential to the Commission's analysis. *Id.*

The Postal Service states that the Modified Agreement is generated from a different template than the baseline agreement, but claims this does not affect its functional equivalency. *Id.* at 4. It also identifies several contractual differences affecting duration and renewal options; scope (the Modified Agreement concerns only

² Docket No. CP2011-69, Order No. 840, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Operators 1 Negotiated Service Agreement, September 7, 2011.

prices for inbound surface parcels); and choice of law and dispute resolution methods.

Id. It asserts that these differences do not affect the cost or market characteristics of the services being offered or the fundamental nature of the agreements, and that nothing detracts from the conclusion that the Modified Agreement is functionally equivalent to the baseline agreement. *Id.*

IV. COMMENTS

The Public Representative filed comments in response to Commission Order No. 1471.³ No other comments were received.

The Public Representative states that because the instant Modified Agreement is identical to the original Norway Post Agreement in every respect except the 18-month extension, it is functionally equivalent to the designated baseline agreement. PR Comments at 3. With respect to section 3633 considerations, the Public Representative concludes that the model indicates that the negotiated rate for Inbound Air Parcel Post set forth in the Modified Agreement will generate a positive contribution and “therefore will not degrade the cost coverage of the product.” *Id.*

The Public Representative asserts that the estimated cost coverage appears optimistic given the expected continuing rise in postal costs (while the applicable rate remains the same). *Id.* He also claims that the estimated cost coverage depends heavily upon the reliability of the Postal Service’s estimates of revenue and cost, with little margin for error. *Id.*

The Public Representative states that while the requirements of 39 U.S.C. § 3633 apply to competitive products, rather than to individual contracts, section 3633(a)(1) prohibits the subsidization of competitive products by market dominant

³ Public Representative Comments on Postal Service Notice of Filing an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 24, 2012 (PR Comments). See *also* Order No. 1471, Notice and Order Concerning Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (Norway Post Agreement), September 17, 2012

products. *Id.* at 4. He therefore questions whether the Postal Service should enter into contracts like the Modified Agreement, where revenues only minimally cover costs during the extension, which may result in an insufficient cost coverage when actual data become available. *Id.*

V. COMMISSION ANALYSIS

The Commission's responsibility is to ensure that the Modified Agreement is functionally equivalent to the baseline agreement and satisfies the requirements of Commission rules 3015.5 and 3015.7 and 39 U.S.C. § 3633.

Functional equivalence. The Commission's review of the Modified Agreement leads to a conclusion that it is functionally equivalent to the baseline agreement. The contractual differences (affecting duration, scope, applicable law, and dispute resolution) do not alter this conclusion. The Postal Service's use of a different template for the financial workpapers prompted Chairman's Information Request No. 1, which posed two questions addressing cost initiatives, volumes and related matters.⁴ The Postal Service's responses satisfactorily resolve the questions posed by explaining that the workpapers included in this filing are based on a template for a different contract, and therefore some components do not pertain to the Modified Agreement.⁵

Section 3633 considerations. The financial models demonstrate that the Modified Agreement will minimally cover costs (39 U.S.C. § 3633(a)(2)); should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)); and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. § 3633(a)(3)). Thus, a preliminary review of the instant contract indicates that the Modified Agreement comports with the provisions applicable to rates for competitive products. The Public Representative's submission emphasizes

⁴ Chairman's Information Request No. 1, September 18, 2012.

⁵ Response of the United States Postal Service to Chairman's Information Request No. 1, at 1-2, September 21, 2012.

the importance of the estimates in the supporting financial model, given the 18-month extension at existing prices.⁶

Other considerations. The Postal Service identifies October 1, 2012, as the effective date of the Modified Agreement. If this date changes, the Postal Service shall notify the Commission of the revised effective date. The Postal Service shall notify the Commission if the Modified Agreement terminates earlier than its scheduled term. In addition, within 30 days of expiration or early termination of the Modified Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Modified Agreement.

Conclusion. The Commission concludes that the Modified Agreement is appropriately included within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Modified Agreement filed in Docket No. CP2012-60 is included within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010-34) product.
2. The Postal Service shall notify the Commission if the effective date of the Modified Agreement differs from the intended effective date.
3. The Postal Service shall notify the Commission if the Modified Agreement terminates prior to the scheduled termination date.

⁶ However, a cost contingency factor relevant to the rates for inbound air parcel items is included in the financial model to account for potential increases in costs. *Id.* at 2.

4. Within 30 days of expiration, or early termination of the Modified Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Modified Agreement.

By the Commission.

Shoshana M. Grove
Secretary